

REMARKS

Claims 1-15 are currently pending in the application. Only claim 1 is in independent form.

The drawings stand objected to as failing to comply with 37 C.F.R. §1.84(p)(4) because they do not include reference numbers 16, 17, 18, and 19. The drawings have been corrected and replacement sheets are enclosed herewith. Reconsideration of the objection is respectfully requested.

Claim 7 stands objected to as including the language "any one of the preceding claims" but it is unclear as to what claim 7 depends. Claim 7 has been amended to correct this ambiguity and reconsideration of the objection is respectfully requested.

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action has held that line 3 refers to "characterized by a first clamp," but it is unclear whether the clamp limitation is describing the guide element, if the clamp element is separate from the guide element, or if the clamp is part of the guide element structure. Claim 1 has been amended herein to clarify the ambiguity and reconsideration of the rejection is respectfully requested.

Claims 1, 3, and 4 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Warner et al. patent. The limitations of non-rejected claim 2 have been incorporated into the claims thereby rendering the present rejection moot. Reconsideration of the rejection under 35 U.S.C. §102(b), as anticipated by the Warner et al. patent, as applied to the claims is respectfully requested,

Claims 1-5 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Indigo Instruments website. Reconsideration of the rejection under 35 U.S.C. §102(b),

as anticipated by the Indigo Instruments website, as applied to the claims is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action has held that the Indigo Instruments website discloses that the combination of posts, guide members, and clamps can be used for any experimental setup. The Office Action concludes that Indigo Instruments website therefore teaches a device including first and second guide elements through which instruments are passed along an axis of insertion towards a target; characterized by a first clamp having a clamping position on the axis between the guide elements and the target, or on the opposite side of the guide elements for clamping instruments passing through the guide elements. The Office Action further concludes that the Indigo Instruments website teaches a second clamp having a clamping position on the axis of insertion and on the opposite side of the guide elements wherein each clamp is moveable away from its clamping position, wherein each clamp is swivelable away from the clamping position, and wherein the second clamp is disposed between the guide elements and the target.

However, there is no evidence showing that the Indigo Instruments website was available prior to the priority date of the present invention. Even if there is some evidence to support that the Indigo Instruments website was available prior to the priority date of the present invention, it is respectfully submitted that the presently

pending independent claim is not anticipated by the Indigo Instruments website. While the Indigo Instruments website does provide a variety of clamps and guides, there is no disclosure or suggestion of the invention as recited in the presently pending independent claim. The structural inter-relationship recited in claim 1 is not disclosed or suggested at the Indigo Instruments website, further there is no disclosure of a stereoguide anywhere on the Indigo Instruments website. The term "stereoguide" as defined in the specification as filed pertains to a device for use in surgery in which precise positioning is required (See for example page 9, lines 19-23; page 4, lines 27-29). The specification in general discloses that the claimed device relates to a surgical instrument, further the "Background of the Invention" details the need for precise positioning of the claimed device. It is respectfully submitted that the clamps and guides disclosed at the Indigo Instruments website could not provide the precision that is achieved utilizing the device as recited in the presently pending independent claims. Instead, all that is disclosed is general lab equipment, such as devices that are used in teaching labs for dissecting animals. There is no disclosure or suggestion of the precision equipment of the presently pending independent claims. Accordingly, since the Indigo Instruments website does not disclose or suggest the invention as recited in the presently pending independent claims, the claims are patentable over the Indigo Instruments website and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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